JD–59–13
Cleveland, OH

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

THE MARLEIGH GROUP, INC. d/b/a
ALLIED LIGHTING SERVICES AND
THE EVOLUTION LIGHTING GROUP,
LLC d/b/a YESCO, A SINGLE EMPLOYER,
SINGLE INEGRATED ENTERPRISE AND
ALTER EGO

and CASE 08-CA-086251

JOHN SECUNDE, AN INDIVIDUAL

THE MARLEIGH GROUP, INC. d/b/a
ALLIED LIGHTING SERVICES AND
THE EVOLUTION LIGHTING GROUP,
LLC d/b/a YESCO, A SINGLE EMPLOYER,
SINGLE INEGRATED ENTERPRISE AND
ALTER EGO

and CASE 08-CA-091262

INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, DISTRICT COUNCIL 6
THE MARLEIGH GROUP, INC. d/b/a
ALLIED LIGHTING SERVICES AND
THE EVOLUTION LIGHTING GROUP,
LLC d/b/a YESCO, A SINGLE EMPLOYER,
SINGLE INEGRATED ENTERPRISE AND
ALTER EGO

and CASE 08-CA-095918

D. SCOTT GALLENTINE, AN INDIVIDUAL

*Kelly Freeman, Esq.,* of Cleveland, OH,
for the Acting General Counsel.
*Marilyn Widman, Esq.,* of Toledo, OH,
for the Charging Party Allied Trades and Painters.
*Mark Wasserman, Jesus Rosado, and Erin Rosado,* of Solon, OH,
for the Respondents.

## DECISION

## Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me on June 25 through 27, 2013, in Cleveland, Ohio, pursuant to an order consolidating cases issued by the Regional Director for Region 8 of the National Labor Relations Board (the Board). The complaint, based upon original charges and amended charges filed on various dates in 2012[1] and 2013 by John Secunde (Secunde), International Union of Painters and Allied Trades, District Council 6 (District 6 or Union), and by D. Scott Gallentine (Gallentine), alleges that The Marleigh Group, Inc. d/b/a Allied Lighting Services and The Evolution Lighting Group, LLC d/b/a YESCO, a Single Employer, Single Integrated Enterprise and Alter Ego (the Respondents, Respondent Allied, or Respondent Evolution), has engaged in certain violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The Respondents filed a timely answer to the complaint denying that they had committed any violations of the Act.

## Issues

The complaint alleges that the Respondents violated Section 8(a)(1) and (3) of the Act when on or about May 30 and July 10, they discharged employees Secunde and Gallentine because the employees sought assistance from the Union or engaged in protected concerted activities. The complaint also alleges that the Respondents violated Section 8(a)(1) and (5) of the Act when on or about September 1, they withdrew recognition and repudiated the collective-bargaining agreement that they were parties to with the Union. Lastly, the complaint alleges that the Respondents on or about September 14, refused to furnish the Union with necessary and relevant information, and refused to bargain collectively about the effects of its closure of Respondent Allied and/or the cessation of its installation business, in violation of Section 8(a)(1) and (5) of the Act.

On the entire record[2], including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Acting General Counsel and the Union, and oral argument by the Respondents, I make the following

## Findings of Fact

### I. Jurisdiction

Respondent Allied, a corporation with an office and place of business located in Solon, Ohio, has been engaged in providing services related to the installation, service and repair of lighted signs and fixtures. Respondent Allied in conducting its operations, derived gross revenues in excess of $50,000 from sales or performance of services directly to customers outside the State of Ohio. Respondent Allied admits and I find that it is an employer engaged in

[1] All dates are in 2012, unless otherwise indicated.

[2] On May 29, 2013, the District Court issued a memorandum opinion and stipulated order granting the Acting General Counsel's petition for Section 10(j) injunctive relief concerning the Section 8(a)(1) and (5) allegations in the complaint.

commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act (JT Exh. 1).

Respondent Evolution, a corporation with an office and place of business located in Solon, Ohio, has been engaged in providing services related to the service and repair of lighted signs and fixtures. Respondent Evolution in conducting its operations derives gross revenues in excess of $50,000 from sales or performance of services directly to customers outside the State of Ohio. Respondent Evolution admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act (JT Exh. 2).

## II. Alleged Unfair Labor Practices

### A. Background

At all material times, Mark Wasserman held the positions of President and owner of Respondent Allied and owner of Respondent Evolution and has been a supervisor of Respondents within the meaning of Section 2(11) of the Act and an agent of Respondents within the meaning of Section 2(13) of the Act. At all material times, Jesus Rosado held the position of manager of Respondent Allied and owner/manager of Respondent Evolution and has been a supervisor of Respondents within the meaning of Section 2(11) of the Act and an agent of Respondents within the meaning of Section 2(13) of the Act. At all material times Erin Rosado (Mrs. Rosado) has been an owner of Respondent Evolution and has been an agent of Respondent Evolution within the meaning of Section 2(13) of the Act.[3]

Respondent Allied commenced business operations in 1982 and since that time to when it closed on September 7, has engaged in the business of installing and servicing lighted signs and fixtures. The ownership of Respondent Allied consists of Wasserman with 75% and his wife Leigh Wasserman owning 25%. In or around 2007, Respondent Allied hired Rosado as an employee to perform the installation of lighted signs and fixtures.

On or about September 23, 2011, Respondent Evolution was established to solely perform service and maintenance work related to lighted signs and fixtures rather than engaging in the installation function.[4] At that time, the ownership was proportioned with Wasserman holding 65% and Rosado retaining a 35% interest. Respondent Evolution's service business is primarily obtained through its leasing agreement with Young Electric Sign Company (YESCO) who refers business to Respondent Evolution in their geographic area (GC Exh. 75). A small part of Respondent Evolution's business is generated by part-time employees driving in and around the Cleveland, Ohio, geographic area in the evening hours to check whether lighted signs are malfunctioning or need maintenance. If so, a job report is created and Respondent Evolution contacts the business to discern whether they will be authorized to make the repairs. On or about September 5, an addendum to the leasing agreement was executed that revised Respondent Evolution's ownership to now reflect Wasserman with a 49% interest, Rosado maintaining his 35% interest, and Mrs. Rosado now owning a 16% interest.[5]

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[3] Mrs. Rosado, the former Erin Wasserman and daughter of Wasserman, is married to Rosado.

[4] Wasserman signed and wrote the check for the YESCO franchise location on a Respondent Evolution lighting group check (GC Exh. 78).

[5] The addendum and YESCO franchise documents reflect that Wasserman is named

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Since about April 28, 2008, and at all material times, Respondent Allied has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in a collective-bargaining agreement which was effective from May 1, 2008 to May 1, and extended by mutual agreement until July 31 (GC Exh. 5 and 8).

B. The 8(a)(1) and (3) Allegations

The Acting General Counsel alleges that on May 30 and July 10, the Respondents discharged its employees Secunde and Gallentine because they sought the assistance of the Union or engaged in protected concerted activities.

Facts-Secunde

Secunde worked at Respondent Allied on three separate occasions, the most recent of which was from January 2012 to May 30.[6] He served as a sign helper, truck driver, and crane operator performing service work related to lighted signs and fixtures.

Secunde has been a member of the Union since 1998. He was hired at Respondent Allied in January 2012, after participating in an interview with Wasserman and Rosado.[7] During the period of his employment in 2012, Rosado served as his first line supervisor.

On May 30, Secunde reported for work and met with Rosado and Wasserman. According to Secunde, he was informed that his workmanship on the recently completed North Point Garage job was horrible and that Wasserman gave him the choice of going back on his own time to clean off the paint on the signs or being suspended for 10 days. Secunde declined the offer to re-do the work and informed Wasserman that he would gladly take the 10 day suspension. Secunde left the meeting, and after gathering his tools, went directly to the time clock and signed out. Secunde further testified that on his way out of the facility he informed Rosado that he would call the Union business agent Tony Watroba as soon as he arrived home but Rosado did not say anything.

Wasserman testified that he met with Secunde in the office on May 30, and informed him of the customer's complaints concerning his performance while working on the North Point Garage job that would cost the company about $12,000 to re-do.[8] Wasserman stated that he planned on suspending Secunde but after confronting him with the customer's complaints about his poor workmanship, Secunde stormed out of the office and never again contacted Wasserman or reported for work the next day. Accordingly, Wasserman sent Secunde a letter dated May 30 stating that since he left the building and did not report for work the next day, Respondent Allied was accepting his resignation (GC Exh. 35). Secunde sent a copy of the letter back to Wasserman with the gasoline credit cards he had been provided and noted on the letter the words, "Why did you write this, it is so untrue".

Respondent Evolution's President and Primary Owner (GC Exh. 75).

[6] Secunde's dates of employment were from June 2005 to July 2008, November 2009 to October 2010, and January 2012 to May 30.

[7] Wasserman knew that Secunde was a member of the Union based on his prior employment with Respondent Allied.

[8] R Exh. 5 shows the work that was completed by Respondent Allied to correct the problems associated with Secunde's work at the North Point Garage job.

## Discussion

While there is a direct credibility issue concerning what occurred during the meeting on May 30, specifically whether Secunde was given the option of re-doing the work on his own time at the North Point Garage job or agreeing to a 10 day suspension versus whether Secunde stormed out of the meeting before his job performance could be fully discussed and a 10 day suspension given to him due to his poor workmanship, I find that it is not necessary to resolve this credibility issue as it is not dispositive for the following reasons.

The Acting General Counsel alleges in paragraph 14 of the complaint that Secunde was discharged on May 30 because he sought assistance from the Union.

That assertion, however, is not supported by the record evidence. The only mention of the Union during Secunde's tenure of employment in 2012 occurred during the January employment interview that was brought up by Secunde. Wasserman replied I don't even fool around with that anymore and agreed that union dues would be deducted directly from his paycheck. Indeed, Secunde testified that union dues were immediately taking out of his paycheck. During her opening statement Counsel for the Acting General Counsel asserted that Secunde vocalized his intent to contact the Union during the May 30 meeting with Wasserman, however, no evidence to this effect was presented. While Secunde testified that he informed Rosado on his way out of the facility that he planned on calling Union business agent Watroba, Wasserman was not privy to that conversation and it occurred after the decision had been made to suspend Secunde. Moreover, during the period of Secunde's employment between January 2012 and May 30, there was no evidence presented that he was interrogated by Respondent Allied about his union activity, that any grievance or other activity under the parties' existing collective-bargaining agreement was undertaken by Secunde or on his behalf, or that any animus was directed at Secunde because of his union membership or activities.[9] To the contrary, Wasserman agreed to have Secunde's union dues deducted from his paycheck and never demeaned or criticized his membership in the Union during his 2012 employment tenure.

It is apparent based on the record evidence that regardless of whether Secunde was suspended, terminated, resigned or quit his position, it was directly related to the customer's complaints about his performance while working on the North Point Garage job, a matter specifically unrelated to his union activities.[10] Moreover, no mention of the Union was made by Secunde during the May 30 meeting when he was given the choice, according to him, of re-doing the work on his own time or taking a 10-day suspension.[11]

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[9] While Wasserman admitted that Secunde had filed grievances under the parties' collective bargaining agreement during his prior periods of employment, the Acting General Counsel did not introduce any evidence to this effect. I note that Secunde did not assert that he filed any grievances between January 2012 and May 30 nor did the Acting General Counsel provide any evidence to the contrary. Moreover, Secunde did not testify that he engaged in any union activities during his 2012 period of employment.

[10] See, *Yuker Construction Co.,* 335 NLRB 1072 (2001) (discharge of employee based on mistaken belief does not constitute unfair labor practice, as employer may discharge an employee for any reason, whether or not it is just, so long as it is not for protected activity).

[11] The Acting General Counsel's argument that Wasserman exhibited animus against Secunde in part because he had attempted to interfere with his ability to join the Union in 2010 is rejected. In this regard, Secunde authored the August 12, 2010 letter requesting that he not

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Under these circumstances, I find that the Acting General Counsel did not sustain the allegations in paragraph 14 of the complaint, and I recommend that they be dismissed.

Facts-Gallentine

In or around April 2012, Gallentine mailed a resume to Respondents seeking employment as a sign installer. Rosado, after receiving the resume, contacted Gallentine and scheduled an interview that took place in April 2012 at Respondents offices. After conducting the interview, Rosado introduced Gallentine to Wasserman who informed him that there were two companies one of which did installation and another that exclusively did service and maintenance for lighted signs and fixtures. Gallentine expressed an interest in being employed by Respondent Allied due to his experience in lighted sign installation. A second interview was scheduled toward the end of April 2012 wherein Rosado and Wasserman discussed employment terms and ultimately offered Gallentine a position with Respondent Allied as a sign installer for which he commenced employment on May 1.

During the course of his employment between May 1 and July 10, Gallentine voiced concerns to Wasserman and Rosado about the safety of Respondents trucks, and specifically noted that the tread on some of the trucks and trailers were worn and hydraulic fluid was leaking from certain crane trucks.[12] While Rosado indicated he would talk to Wasserman and it would be taken care of, Gallentine testified that the problem still existed on the last day of his employment.

In his second employment interview, Wasserman informed Gallentine that a requirement of the position was to possess a commercial driver's license (CDL), and it had to be obtained prior to the completion of his 90-day probationary period under the parties' collective-bargaining agreement. In late June 2012, Gallentine informed Wasserman that he obtained a CDL permit but expressed his disappointment that Wasserman would not permit him to take paid time-off to finalize the CDL requirement.

During early July 2012, Gallentine discussed with Wasserman and Rosado his interest in becoming a member of and/or being represented by the Union.

On July 6 (Friday), Wasserman asked Gallentine if he was interested in working on Sunday at the Hollywood Casino job near Cincinnati, Ohio. Gallentine was happy to do so and met Wasserman at the office on July 8 (Sunday) before departing late afternoon for the out of town job. Normally, when employees go out of town for an overnight trip, a packet is provided that contains cash to cover food and incidental expenses. Upon arriving at the job site on Sunday, Gallentine noticed that no cash had been provided and that he would now be required to self fund his expenses. After a portion of the job was completed, and while driving back to the office on July 9 (Monday), Gallentine sent a text message to Wasserman complaining that he had to pay his own expenses noting that it wasn't right. Upon returning to the office on Monday afternoon, Gallentine met with Wasserman and reiterated his frustration that he and

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be put in the Union due to financial constraints (R Exh. 2), no specific evidence was introduced that Respondent Allied experienced problems with the Union in 2010, and the incident is too remote in time to Secunde's termination/resignation on May 30.

[12] These conversations occurred in June 2012 while working at jobs for the Honda and Cadillac automobile dealerships.

another co-worker had to self fund their expense money while on overnight travel. During the discussion, Gallentine also informed Wasserman that he was entitled to double-time pay for having worked on Sunday.

On July 10 (Tuesday), Gallentine reported for work but was requested to remain in the office. He was then directed to Wasserman's office and in the presence of Rosado was informed by Wasserman that things are not working out and I have to let you go effective today.

By letter dated July 18 to Gallentine, Wasserman enclosed a copy of his final time card and requested that it be signed and returned in order for him to receive his final paycheck (GC Exh. 38). Gallentine signed the time card on July 25th and sent it back to Wasserman. While Gallentine noted that he was amending the time card to include work performed on July 8th (Sunday), neither the double time nor the reimbursed travel expenses were included in his final pay check.

## Discussion

The protected nature of Gallentine's efforts to protest Respondent's actions concerning travel and compensation has long been recognized by the Board who has held that similar conduct comes within the guarantees of Section 7 of the Act. See *Joseph DeRairo, DMD, P.A.* 283 NLRB 592 (1987). The Board has also held in *Mike Yurosek & Sons, Inc.,* 306 NLRB 1037, 1038 (1992), that "individual action is concerted where the evidence supports a finding that the concerns expressed by the individual are [sic] logical outgrowth of the concerns expressed by the group." In this case, I find that Gallentine's discussions, on his own about travel and compensation, applied to all employees and fell within the ambit of protected concerted activity. Moreover, the subject of travel, overtime, and safety of equipment is covered under the parties' collective-bargaining agreement. However, it must be determined whether Gallentine was terminated based on such activity.

In *Wright Line,* 251 NLRB 1083 (1980), enfd, 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer decision. On such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399-403 (1993). In *Manno Electric,* 321 NLRB 278 fn. 12 (1996), the Board restated the test as follows. The General Counsel has the burden to persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity.

I find that the Acting General Counsel sustained his initial burden of showing that Gallentine's protected activity was a motivating factor in the decision to terminate him. In this regard, Gallentine engaged in protected activity by complaining about the safety of Respondent's work vehicles, the lack of assistance in obtaining a CDL, receiving per diem for travel, and being paid double time for work performed on Sundays. Additionally, in early July 2012, Gallentine informed the Respondents of his interest in being represented by or joining the Union. The Respondents were aware of this activity, and animus against such activity was exhibited by the Respondents. Moreover, the timing of Gallentine's termination demonstrates animus by the Respondents. I further find that the Respondents have not met its rebuttal

burden under *Wright Line*, of showing that it would have discharged Gallentine even in the absence of his protected activity. Notably, the test applies regardless of whether the case involves pretextual reasons or dual motivation. *Frank Black Mechanical Services,* 271 NLRB 1302 fn. 2 (1984). The Board has held that a finding of pretext necessarily means that the reasons advanced by the employer either did not exist or were not, in fact relied upon, thereby leaving intact the inference of wrongful motive. *Limestone Apparel Corp.* 255 NLRB 722 (1981), enfd. 705 F. 2d 799 (6th Cir. 1982). In short, a finding of pretext defeats any attempt by the employer to show that it would have discharged the discriminatee absent his or her protected conduct. *Golden State Foods Corp.* 340 NLRB 382 (2003).

Moreover, when an employer provides shifting reasons for discharging an employee, the Board has found that the proffered reasons are pretextual and the true reason is animus. *Mt. Clemens General Hospital,* 344 NLRB 450, 458 (2005); *Seminole Fire Protection, Inc.,* 306 NLRB 590 (1992).

While Wasserman argued in his opening statement that Gallentine exhibited a bad attitude and was a troublemaker during the course of his employment, the record confirms that during Gallentine's tenure not one counseling session or warning occurred. Likewise, no documentation was produced to support these assertions. I also note that Wasserman did not offer any reasons for Gallentine's termination, including being a troublemaker or exhibiting a bad attitude, during their final meeting on July 10, other than informing him it didn't work out and he was being let go.

It is quite apparent that Wasserman did not take lightly Gallentine's repetitive complaints about the safety of Respondents vehicles and his voiced concerns about the failure of the Respondents to provide per diem and double time for Sunday work. I particularly note that while driving home on Monday after the Sunday work assignment, Gallentine sent a text message to Wasserman raising these issues and reiterated his concerns to Wasserman personally when they met at the office upon his return from the out of town job. According to Gallentine, and not rebutted by the Respondents, Wasserman was visibly upset about the text message and when the issue of double time was raised, Wasserman replied he would not be reimbursed. The timing of these actions, in the absence of any concrete reasons to support the termination, convinces me that the true reason for the termination was Gallentine's persistent complaints about terms and conditions of employment contained in the parties' collective-bargaining agreement and engaging in protected concerted activities under the Act.[13]

In summary, I find that Gallentine was terminated for protesting matters covered under the parties' collective-bargaining agreement and/or for engaging in protected concerted activities on his and other employee's behalf. Accordingly, such actions violate Section 8(a)(1) and (3) of the Act. *Kingsbury Inc.,* 355 NLRB 1195 (2010) (assertion of an individual right arising from a collective bargaining agreement constitutes protected concerted activity).

[13] Section 17.06 of the parties' collective bargaining agreement provides that employees are entitled to per diem for travel, section 18.02 addresses safety of equipment including vehicles, and section 5.02 requires that Sunday work shall be paid for at the rate of double time (GC Exh. 5). Union Business Representative Watroba testified, without contradiction, that the above provisions of the parties' collective agreement pertain to employees such as Gallentine who are in their 90 day probationary period.

## C. The 8(a)(1) and (5) Allegations

### 1. Single Employer and Alter Ego Status

The Acting General Counsel alleges in paragraph 5 of the complaint that Respondent Allied and Respondent Evolution have had common ownership, management, supervision, business purpose, equipment, customers, administrated a common labor policy, have shared common premises and facilities and have provided services for each other, and therefore are, and have been at all material times, alter egos, a single-integrated business enterprise, and a single employer within the meaning of the Act.

#### Facts

At the time that Respondent Allied was formed in 1982, Wasserman owned 75% of the company with the remaining interest vested in his wife. He also held the title of President. When Respondent Evolution was formed on September 23, 2011, Wasserman held a 65% ownership interest with Rosado owning the remaining 35%. The ownership interest changed on September 5, when an amendment to the YESCO franchise agreement listed Wasserman with a 49% ownership interest, Rosado retaining his 35% interest, and Mrs. Rosado now owning 16%. Wasserman was listed as the managing partner of Respondent Evolution (GC Exh. 71), the individual designated on the filing for S corporation status (GC Exh. 76), an account executive (GC Exh. 77), the President and Primary Owner (GC Exh. 75), and as the designated agent in the Articles of Organization for the State of Ohio (GC Exh. 45).

With respect to business purpose, while Wasserman and Rosado testified that Respondent Evolution only performed service and maintenance for lighted signs and fixtures, the record evidence belies those assertions. For example, when both Respondent Allied and Respondent Evolution co-existed between September 23, 2011 and September 7, employees of Respondent Allied routinely were given job orders for Respondent Evolution and Respondent Evolution employees performed installation functions. Moreover, the supervision of employees working for both companies was regularly interchanged with employees taking direction from either Wasserman or Rosado regardless of which entity had created the job orders. Thus, the assignment of installation and service/maintenance work was regularly interchanged between Respondent Allied and Respondent Evolution.

The equipment used by both Respondent Allied and Respondent Evolution was shared depending on the designated job. For example, prior to ceasing operations on September 7, the trucks owned by Respondent Allied were transferred directly to Wasserman (GC Exh.13) who in turn, according to his testimony, were transferred to Respondent Evolution at no cost.[14] During the period between September 23, 2011 and September 7, depending on the job order, a magnetic strip with Respondent Evolution was placed over the side door lettering of Respondent Allied trucks for jobs completed by Respondent Evolution (GC Exh. 16 and 17).

[14] Respondents Exhibit 16 purports to show that effective November 1, 2011, Respondent Evolution agreed to pay $2200 per month to lease 2 bucket trucks from Respondent Allied. I am circumspect of this agreement due to the fact that it is contrary to Wasserman's testimony (that he transferred trucks directly to Respondent Evolution at no cost), and Respondent Evolution was unable to produce any cancelled checks or payment confirmation in support of the agreement.

Record testimony confirms that common tools were stored in a joint warehouse and were utilized by employees of Respondent Allied and Respondent Evolution. Likewise, employees of both companies used the same time clock to sign-in upon arriving at work and clocking out at the end of the work day.

In comparing the customer lists of Respondent Allied and Respondent Evolution, it establishes that common customers serviced by both companies appear thereon (GC Exh. 14 and 15).

Both Respondent Allied and Respondent Evolution maintained Employee Handbooks that had to be signed as a condition of employment. When comparing both Handbooks, the terms and conditions for the employees of each company are substantially identical (GC Exh. 3 and 4).

Respondent Allied and Respondent Evolution shared common premises and facilities with an address of 5351 Neiman Parkway. Respondent Allied was located in Suite A with Respondent Evolution housed in Suite B. While a separate sign appears above the door to each suite, once walking through the main door, the floor plan shows an open office area with common areas and offices that can be accessed without going through inner locked doors (GC Exh. 64). Wasserman admitted for the period of September 23, 2011 to September 7, Respondent Allied paid the rent for both Respondent Allied and Respondent Evolution.[15]

Record testimony confirms that employees of Respondent Allied, after it ceased operations, were hired and worked for Respondent Evolution. For example, employees Jennifer Devito (secretary), Karla Spehar (secretary), David Atkins (installer and service technician) and William Setter (service technician) were all hired by Respondent Evolution.

Wasserman testified that he did not take an active role in the management of Respondent Evolution after it was created in September 2011. Record testimony dictates otherwise. For example, Pete Sherer who worked for Respondent Allied from February-June 2007, and for Respondent Evolution from March 12 to June 22, testified that after he interviewed with Wassermann in March 2012, he was contacted by Rosado to participate in a second interview. Rosado hired Sherer and served as his supervisor. However, on occasions, Wasserman handed out work assignments to Sherer and discussed issues regarding individual job orders with him. Likewise Sherer noted that, on occasions, Rosado gave him Respondent Allied work orders to complete. Sherer testified that he attended two meetings in April and May 2012 that had employees present from both Respondent Allied and Respondent Evolution in which both Wasserman and Rosado jointly addressed the employees.[16] During these meetings, Wasserman addressed common mistakes that were made on their respective jobs and urged employees to be more vigilant. Lastly, on June 22, Wasserman terminated Shere

[15] Respondents Exhibit 18 purports to show that effective November 1, 2011, Respondent Evolution agreed to pay $4,000 per month for its share of the rent to Respondent Allied. I am circumspect of this agreement due to the fact that it is contrary to Wasserman's testimony (that Respondent Allied paid the rent for Respondent Evolution between September 23, 2001 and September 7), and Respondent Evolution was unable to produce any cancelled checks or payment confirmation in support of the lease agreement.

[16] Gallentine also testified that he attended employee meetings during his tenure of employment in which Wasserman and Rosado jointly addressed Respondent Allied and Respondent Evolution employees.

due to his inability to obtain a CDL license, even though Sherer was not an employee of Respondent Allied.

Discussion

In determining whether two nominally separate employing entities constitute a single employer, the Board examines four factors: (1) common ownership, (2) common management, (3) interrelation of operations, and (4) common control of labor relations. No single factor is controlling, and not all need to be present. Rather, single employer status ultimately depends on all the circumstances. It is characterized by the absence of an arm's length relationship among seemingly independent companies. *Mercy Hospital of Buffalo,* 336 NLRB 1282, 1283-1284 (2001) and *Dow Chemical Co.,* 326 NLRB 288 (1998).

With respect to the Acting General Counsel's theory that Respondents are alter egos, the Board utilizes additional factors and a broader standard in determining whether two ostensibly distinct entities are in fact alter egos. The Board considers whether the entities in question are substantially identical, including the factors of management, business purpose, operating equipment, customers, supervision as well as common ownership. *Crawford Door Sales Co.,* 226 NLRB 1144 (1976); *Advance Electric,* 268 NLRB 1001, 1002 (1984).

The Respondents argue that the creation of an enterprise (Respondent Evolution) for the purpose of obtaining non-union work does not establish an unlawful motive. *First Class Maintenance Service, Inc.* 289 NLRB 484 (1988). The fallacy of this argument, in comparison to the facts in the subject case, is that the Board held in that case that the separate entity did not share supervision, management, or ownership, and the former company continued as a separate ongoing business. Here, as found above, Respondent Evolution shares supervision, management and ownership with Respondent Allied but Respondent Allied no longer continues as a separate ongoing business that performs field operations. Moreover, Wasserman admitted that he never informed the Union that it established Respondent Evolution on or about September 23, 2011, a factor that indicates unlawful motivation.[17]

Based on the forgoing, and particularly noting that the record facts noted above conclusively establish the criteria the Board requires for a single employer or alter ego relationship, I find that the Acting General Counsel has established that Respondent Allied and Respondent Evolution are single employers and/or alter egos. Indeed, the record is replete with examples that Respondent Allied and Respondent Evolution worked together seamlessly between September 23, 2011 and September 7.

2. Refusal to Negotiate, Withdrawal of Recognition and Repudiation of Collective-Bargaining Agreement

The Acting General Counsel alleges in paragraphs 17 and 19 of the complaint that since September 1 and 14, the Respondents have withdrawn recognition, refused to meet and bargain with the Union about the effects of Respondents closure and/or cessation of the installation business, and repudiated the terms and conditions of the most recent collective-

[17] By letter dated May 23 to Wasserman, the Union sought information that suggested that Respondent Allied had established an alter ego or double breasted company to avoid the parties' collective-bargaining agreement (GC Exh. 21). The record establishes that Wasserman did not respond to the letter or produce the requested information.

bargaining agreement between the parties.

Facts

By letter dated August 31, the Union requested to resume and complete negotiations for a successor agreement with Respondent Allied. The Union requested Respondent Allied to inform it when negotiations could resume or whether counteroffers would be forthcoming (GC Exh. 23).

By letter dated September 7, Counsel for Respondent Allied informed the Union that Respondent Allied has ceased business operations and is in the process of winding up its corporate affairs (GC Exh. 24).

By letter dated September 14, the Union accepted Respondent Allied's invitation to engage in effects bargaining and requested 10 items of information to assist it in that endeavor (GC Exh. 25).

With the closure of Respondent Allied on September 7, all further communications ceased between the parties regarding resuming negotiations for a successor collective-bargaining agreement and engaging in negotiations over the effects of closing its business.

Likewise, Respondents abandoned the collective-bargaining process, withdrew recognition of the Union by refusing to recognize and bargain, and failed to continue in effect the terms and conditions of employment established by the parties' collective-bargaining agreement.

Discussion

Based on the testimony of Wasserman, I find that the Respondents were bound to continue in effect the then current terms and conditions of employment contained in the collective-bargaining agreement between it and the Union. Likewise, I find that on September 1, the Respondents unilaterally withdrew recognition and repudiated the collective-bargaining agreement then in effect. See *Scheid Electric,* 355 NLRB No. 27 (2010) (holding that an employer is not free to unilaterally repudiate an existing collective-bargaining agreement with an incumbent union, regardless of whether the parties' agreement is based on a Section 9(a) or 8(f) relationship).

Therefore, since the Respondents have failed and refused to apply the terms and conditions of the collective-bargaining agreement between it and the Union, they have failed and refused to bargain in good faith with the exclusive bargaining representatives of their employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(1) and (5) of the Act. *Barnard Engineering Company, Inc.* 295 NLRB 226 (1989) (ordering the respondent and alter ego to comply with agreement in effect at time of unfair labor practice and subsequent agreement then in effect and further ordered both respondents to pay the wage rates and make contributions to the fringe benefit funds as provided in those agreements).

Refusal to Provide Information

The Acting General Counsel alleges in paragraph 18 of the complaint that since on or about September 14, Respondents have failed and refused to furnish the Union with necessary and relevant information that it had requested.

Facts

By letter dated September 14, the Union requested the Respondents to provide 10 items of necessary and relevant information to substantiate its single employer/alter ego status and to confirm that Respondent Allied had notified its employees, customers, and state authorities that it was ceasing business operations.

Discussion

The Board has held that a union is entitled to requested information "if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties as the employees' exclusive bargaining representative." *Southern Nevada Builders Assn.,* 274 NLRB 350, 351, (1985). This liberal discovery-type standard nevertheless contains an important limitation: the data must be of use in fulfilling statutory duties. The "duty to furnish . . . information stems from the underlying statutory duty imposed on employers and unions to bargain in good faith with respect to mandatory subjects of bargaining." *Cowles Communications, Inc.,* 172 NLRB 1909 (1968).

It is long-established law that the duty to bargain in good faith embodied in Section 8(a)(5) of the Act includes the obligation of employers to provide their employees' collective bargaining representatives with requested information which is relevant and necessary to the representative's duty to bargain on behalf of employees. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Such information may be needed for bargaining, for administering and policing collective-bargaining agreements, for communicating with bargaining unit members, or for preserving unit employees' work, among other reasons. Information pertaining to the terms and conditions of employees in the bargaining unit is presumptively relevant, and must be provided upon request, without need on the part of the requesting party to establish specific relevance or particular necessity. *Iron Workers Local 207(Steel Erecting Contractors),* 319 NLRB 87, 90 (1995).

The duty to furnish information requires a reasonable good faith effort to respond to the request as promptly as circumstances allow. *Good Life Beverage Co.,* 312 NLRB 1060, 1062 fn. 9 (1993). "An employer must respond to the information request in a timely manner" and [a]n unreasonable delay in furnishing such information or not responding is as much of a violation of Section 8(a)(5) as a refusal to furnish the information at all." *Amersig Graphics, Inc.* 334 NLRB 880, 885 (2000); see also *Newcor Bay City Division,* 345 NLRB 1229, 1237 (2005) (and cases cited therein).

Wasserman testified that Respondents did not respond to or provide the information requested in the September 14 letter. Since I find that the information requested by the Union is necessary and relevant to administer and police the parties' collective-bargaining agreement in addition to preserving unit employees' work, and particularly noting that the Respondents neither responded to or provided the information that was requested, I find that the Respondents violated Section 8(a)(1) and (5) of the Act. *H & R Industrial Services, Inc.* 351 NLRB 1222 (2007) (employer violated the Act by failing to answer questions regarding the relationship between the employer and a suspected single employer/alter ego).

## Conclusions of Law

1. Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By discharging employee D. Scott Gallentine, the Respondents have been discriminating in regard to the hire, tenure, or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.
4. By refusing to provide the Union with necessary and relevant information that it requested on September 14, 2012, by withdrawing recognition of the Union on September 1, 2012, and repudiating the collective-bargaining agreement, by failing and refusing on September 14, 2012, to bargain collectively about the effects of the closure of Respondent Allied and/or the cessation of the installation business, and failing and refusing to maintain the terms and conditions of employment of its collective-bargaining agreement including by ceasing to make contributions to the health and welfare funds and the local pension funds, the Respondents have been failing and refusing to bargain collectively and in good faith with the Section 9(a) representative of its employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(1) and (5) of the Act.
5. Respondent Allied did not violate Section 8(a)(1) and (3) of the Act by either terminating or accepting the resignation of employee John Secunde.

## Remedy

Having found that the Respondents are a single employer or alter egos who engaged in certain unfair labor practices, I shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondents violated Section 8(a)(1) and (3) of the Act by discharging D. Scott Gallentine, I shall order the Respondents to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or any other rights or privileges previously enjoyed. Further, the Respondents shall make the aforementioned employee whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F.W. Woolworth Co., 90 NLRB 289 (1950),* with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987), plus daily compound interest as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010). The Respondents shall also be required to expunge from its files any and all references to the unlawful discharge of the aforementioned employee and to notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way. The Respondents shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. Respondent shall also compensate D. Scott Gallentine for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year. *Latino Express, Inc.,* 359 NLRB No. 44 (2012).

Having further found that the Respondents violated Section 8(a)(1) and (5) by withdrawing recognition from the Union on or about September 1, 2012, and failing to continue in effect all the terms and conditions of the Union agreement, I shall order the Respondents to recognize the Union as the exclusive bargaining representative of employees in the unit and to apply all the terms and conditions of the Union agreement. I shall also order the Respondents

to make whole unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondents failure to continue in effect all of the terms and conditions of the Union agreement in the manner set forth in *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F. 2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded* and *Kentucky River Medical Center, supra.* Lastly, I shall order the Respondents to bargain collectively about the effects of its closure of Respondent Allied's business and/or the cessation of the installation business. In particular, a *Transmarine Navigation Corp.* 170 NLRB 389 (1968) remedy is appropriate. Accordingly, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, I shall order the Respondents to pay each employee the monetary value of their wages due from the closing of the business and to provide them with a limited and conditional make-whole remedy. Thus, the Respondents should pay each employee the monetary value of their losses from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) The Respondents bargain to agreement with the Union on the effects of terminating the business; (2) the parties reach a bona fide impasse in bargaining; (3) the Union fails to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of Respondent's notice of its desire to bargain with the Union; or (4) the Union subsequently fails to bargain in good faith. The sum paid to each employee shall not exceed the value of the difference between his or her wages before and after the reduction from the date of the reduction until the date the Respondents shall have offered to bargain in good faith. However, in no event shall the sum paid to any employee be less than the difference between his or her normal wages and post reduction wages for a 2-week period. The amounts due shall be computed as set forth above. The Respondents shall also file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters as set forth above.

In addition, I shall order the Respondents to make all contractually-required contributions to the Union health and welfare funds and local pension funds that have not been made, including any additional amounts due the funds in accordance with *Merryweather Optical Co.,* 240 NLRB 1213, 1216 fn. 7 (1979). Further, the Respondents shall reimburse unit employees for any expenses ensuing from its failure to make any required contributions, as set forth in *Kraft Plumbing & Heating,* 252 NLRB 891 fn. 2 (1980), enfd, mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service, supra,* with interest as prescribed in *New Horizons for the Retarded and Kentucky River Medical Center, supra.*[18]

Finally, having found that the Respondents violated Section 8(a)(1) and (5) by failing to provide the Union with necessary and relevant information, I shall order the Respondents to furnish the Union with the information it requested in the letter of September 14, 2012.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[19]

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[18] To the extent an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondents delinquent contributions during the period of the delinquency, the Respondents will reimburse the employee, but the amount of such reimbursement will constitute a set-off to the amount that the Respondents otherwise owes to the fund.

[19] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## ORDER

The Respondents, Allied Lighting Services and Evolution Lighting Group of Solon, Ohio, Alter Egos and a Single Employer, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they form, join, or assist the Union or any other labor organization, or engage in concerted activities, or to discourage employees from engaging in these activities.
(b) Failing and refusing to recognize and bargain with the Union as the Section 9(a) exclusive bargaining representative of employees in the unit during the term of their collective-bargaining agreement and any automatic extensions thereof including refusing to negotiate over the effects of Respondent Allied's closure and ceasing business operations.
(c) Repudiating and failing and refusing to continue in effect all the terms and conditions of its collective bargaining agreement with the Union by failing, since about September 1, 2012, to make payments to the health and welfare funds and the local pension funds.
(d) Failing and refusing to furnish the Union with requested information that is necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of employees in the unit.
(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer the employee set forth and named in the remedy section reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
(b) Make the employee set forth and named in the remedy section whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.
(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharge of the employee set forth and named in the remedy section, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.
(d) Recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the unit and honor and comply with the terms of the agreement with any automatic extensions thereof including negotiating over the effects of Respondent Allied's closure and ceasing business operations.
(e) Make whole all bargaining unit employees and all contractually-required fringe benefit funds for any loss of income contributions, or benefits, and for any expenses incurred in connection with those benefit fund losses by those employees, in the manner set forth in the remedy section of this decision.
(f) Make the unit employees whole for any loss of earnings and other benefits, if any, they may have suffered as a result of the Respondents failure to bargain since September 1, 2012, with interest, in the manner set forth in the remedy section of

this decision.

(g) Furnish the Union with the information requested in its letter of September 14, 2012.

(h) Preserve and within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this decision.

(i) Within 14 days after service by the Region, post at its facilities in Solon, Ohio, copies of the attached notice marked "Appendix."[20] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondents authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. *Picini Flooring,* 356 NLRB No. 9 (2010). Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 10, 2012.

(j) Reimburse G. Scott Gallentine in an amount equal to the difference in taxes owed upon receipt of a lump-sum backpay payment and taxes that would have been owed had there been no discrimination against him.

(k) Submit the appropriate documentation to the Social Security Administration so that when backpay is paid to G. Scott Gallentine, it will be allocated to the appropriate periods and reimburse him an amount equal to the difference in taxes owed upon receipt of a lump sum backpay payment and taxes that would have been owed had there been no discrimination against him.

(l) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the act not specifically found.

[20] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Dated, Washington, D.C. September 12, 2013

Bruce D. Rosenstein
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post, mail, and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT discharge employees because they form, join, or assist the Union, or any other labor organization, or engage in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT fail or refuse to recognize and bargain in good faith with the Union by repudiating our collective-bargaining agreement with them and by withdrawing recognition from them as the Section 9(a) exclusive collective-bargaining representative of the unit. In addition, WE WILL NOT fail or refuse to negotiate over the effects of Respondent Allied's closure and ceasing business operations.

WE WILL NOT fail or refuse to continue in effect all the terms and conditions of the collective-bargaining agreement with the Union including by failing to make contributions to their health and welfare funds and local pension funds on behalf of our unit employees.

WE WILL NOT fail to furnish the Union with requested information that is necessary and relevant to its role as the exclusive collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL offer D. Scott Gallentine full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

WE WILL make the above named employee whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct, with interest.

WE WILL, within 14 days, from the date of this Order, remove from our files all references to the unlawful discharge of the above named employee, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be use against him in any way.

WE WILL recognize and bargain in good faith with the Union as the collective-bargaining representatives of our unit employees, and comply with the terms of our collective-bargaining agreement with them.

WE WILL, on request, bargain with the Union as your representative concerning wages, hours, and working conditions. If an agreement is reached with the Union, we will sign a document containing that agreement.

WE WILL make whole unit employees for any loss of earnings or other benefits they may have suffered as a result of our failure, since about September 1, 2012, to continue in effect all the provisions of our collective-bargaining agreement with the Union, with interest.

WE WILL continue in effect all the terms and conditions of our collective-bargaining agreement with the Union, including by making contributions to the health and welfare and the local pension funds that have not been made since September 1, 2012, and WE WILL reimburse unit employees for any expenses ensuing from our failure to make these required payments.

WE WILL furnish the Union with the information it requested in its letter of September 14, 2012.

WE WILL bargain collectively about the effects of Respondent Allied's closure and ceasing business operations.

WE WILL submit the appropriate documentation to the Social Security Administration so that when backpay is paid to D. Scott Gallentine, it will be allocated to the appropriate periods.

WE WILL reimburse D. Scott Gallentine an amount equal to the difference in taxes owed upon receipt of a lump-sum backpay payment and taxes that would have been owed had there been no discrimination against him.

The Marleigh Group, d/b/a Allied Lighting Services and Evolution Lighting Group, d/b/a Yesco of Solon, Ohio, Single Employer/Alter Egos

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1695 AJC Federal Office BLDG
1240 E 9th Street
Cleveland, OH 44199
Hours: 8:15 a.m. to 4:45 p.m.
216-522-3715.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 216-522-3740.